

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER

S.B. Civil Writ Petition No.9793/06
Jaipur Aloo Aratia Sangh Vs. State of Raj.
& Ors.

Date of Order :: 25th July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri S.N. Kumawat, Advocate for
petitioner.

Shri S.N. Gupta, Deputy Government
Advocate

Shri Indrajeet Singh, Advocate for
respondent.

REPORTABLE

Jaipur Aloo Aratia Sangh has filed this writ petition seeking to challenge validity of the notification dated 18.10.2006 and alternatively prayed for quashing the said notification to the extent it de-notified Lal Kothi Mandi Yard and has prayed for a mandamus upon the respondents to continue the same as

sub-mandi yard and further alternatively, restraining the respondents from changing the nomenclature of D-block of Mohana Mandi Yard with the direction to the respondents to allot the shops to the members of the petitioner-sangh as per the agreement in accordance with the originally prepared map.

I have heard Shri S.N. Kumawat, the learned counsel for the petitioner, Shri Indrajeet Singh, the learned counsel for the contesting respondent and Shri S.N. Gupta, the learned Deputy Government Advocate.

Shri S.N. Kumawat, the learned counsel for the petitioner submitted that initially the members of the petitioner-sangh were running their trade from Anaj Mandi situated at Sanganeri Gate, but due

to the increase in the population of the Jaipur City, the said mandi was shifted to Lal Kothi Main Mandi Yard and ever since the members of the petitioner-sangh were carrying on their business from that Yard. It was submitted that in a suo-motu public interest litigation by this Court, a statement was given by the counsel representing the State Government before this Court that an agriculture terminal market at Village Mohana near Sanganer, Jaipur shall be established and in that matter this Court granted eight months time for doing so. This direction was given without providing an opportunity of hearing to the petitioner and its members and correct facts with regard to allotment of land by Jaipur Development Authority (for short- JDA) for

establishment of agriculture produce terminal market at Mohana were not brought to the notice of the Court. The petitioner and others affected therefore filed Special Leave to Petition before the Hon'ble Supreme Court which was decided by judgment dated 13.9.06. In that judgment, Hon'ble Supreme Court noted the preparedness of the petitioner-sangh to shift their business to the shops allotted by Market Committee in Block-D. Matter was however disposed of with opportunity to the State Government to take requisite steps for implementation of the provisions of Rajasthan Agricultural Produce Markets Act, 1961 (for short- the Act of 1961). In the event, the legality or validity of the notification issued under that Act is

challenged before the High Court, it was observed that the same shall be disposed of as early as possible.

Shri S.N. Kumawat, the learned counsel for the petitioner argued that certain questions could not be raised in the earlier litigation because the controversy then was confined to the dispute as to transfer of Principal Mandi Yard Lal Kothi to Mohana New Yard and was not with respect to allotment of shops and internal shifting of the shops in the market at Mohana. The State Government vide its order 28.9.99 directed the Krishi Upaj Mandi Samiti, Lal Kothi to take any decision regarding business with the consent of society or the traders. The Mandi Samiti in turn has imposed certain conditions for the purpose of

allotment of the lands in terminal market, Mohana. The Mandi Samiti by notice dated 1.7.2004 invited applications for allotment of shops on reserved price at the rate of Rs.1,393/- per meter in the terminal market. On demand of the petitioner, Samiti vide letter dated 3.7.04 supplied copy of the map of the complete yard in which specific blocks were shown for various nature of traders which indicated potato-onion shops on eastern side of the yard to be allotted to the members of the petitioner-sangh which was shown as 'D-Block'. The petitioner-sangh submitted a written consent letter on 7.10.2004 expressing their preparedness to shift to D-Block. However, contrary to earlier commitment, the Samiti started making

allotment of the shops / land of D-Block to others which was challenged in S.B. Civil Writ Petition No.1285/05 by the members of the petitioner-sangh as well as individuals. Subsequently, when the aforesaid SLP was decided by the Hon'ble Supreme Court and consequently the State Government issued fresh notification on 18.12.2004, the petitioner-sangh withdrew the aforesaid writ petition with liberty to file fresh one for challenging the notification as also raising other questions in regard to illegal allotment of the shops in the lands of Block-D to others.

Shri S.N. Kumawat argued that most of the members of the petitioner-sangh are having 100 points out of 100 as per the criteria laid down by the respondent

whereas the members of the other trading societies are having lessor numbers. The petitioners thus had a preferential right over any other sangh or union. The members of the petitioner-sangh are entitled to allotment of shops in originally specified D-Block or C-Block which was agreed to by the respondents also in the meeting held on 27.9.04. In fact proceedings of such meeting were approved by the State Government also. The respondents therefore now cannot be permitted to change the place earmarked for the petitioner-sangh by changing the nomenclature of the block.

In regard to challenge to the validity of notification dated 18.10.2006, Shri S.N. Kumawat, the learned counsel for the petitioner argued

that the aforesaid notification is absolutely against the public interest and has been issued in excess of the powers conferred on the government by Section 5 of the Act of 1961. The respondents have denotified the existing Mandi Yard of Lal Kothi whereas there is no provision in Section 5 for denotification of existing Mandi Yard. Such a decision runs contrary to the overall admission of the respondents manifest in their various letters/ correspondence where Mohana Mandi Yard was intended to be terminal market in addition to existing Lal Kothi Mandi Yard. The State Government is thus estopped from denotifying the Lal Kothi Mandi Yard and the members of the petitioner Sangh cannot be asked to stop

their business activities from 1.4.2007 from such yards. Section 5 of the Act merely empowers the Government to issue notice for declaring any enclose building or locality in any market area to the principal market yard or sub-market yard but does not empower them to de-notify an already existing principal market yard and therefore the impugned notification having been issued outside the authority of Section 5 is incompetent in law and liable to be set aside. He also argued that it is the duty of the State Government in the benefit of public to declare the market area under section 4 of the Act. But without notifying the specified area in Mohana as market yard under section 4 of the Act, denotification of the existing yard by

impugned notification issued under section 5 is bad in law. Impugned notification denotifying the existing mandi yard seeks to place unreasonable restrictions on the fundamental right of the members of the petitioner association to trade which is violative of Article 19 (1)(g) of the Constitution, besides being arbitrary and discriminatory and therefore violative of Article 14 of the Constitution of India.

It was further argued that there is no reason with the respondents to shift the originally set up D-Block as this amounts to making major changes in the lay out plant. In spite of the fact that the respondents are having vacant shops in the extended Block-C at the place of earmarked Block-D which is virtually the

place of originally earmarked Block-D, the respondents are seeking to shift the members of the petitioner-sangh from eastern corner to western corner which is at the end of the yard. 75% of the shops of the existing Block-C are in fact covering the area of Block-D and are still lying vacant which are indicated in map. Most of the important shops in Block-A and C shown on western corner of the scheme have been allotted to the food traders in place of the members of the petitioner-sangh and it is behind them that four rows of shops have been kept vacant for the petitioner-sangh. This is an arbitrary and colourable exercise of power seeking to allot the shops at less important site to the members of petitioner-sangh. Impugned notification

is therefore liable to be quashed and set aside. In the alternative, it has been prayed that the respondents be restrained from changing the nomenclature of D-block and be required to make allotment of the shops in that block to the members of the petitioner Sangh.

Per contra, Shri Indrajeet Singh, the learned counsel appearing for the Mandi Samiti opposed the writ petition and argued that originally the Food and Vegetable Market was situated at Sanganeri Gate, Johari Bazar, Jaipur but looking to the shortage of space and heavy traffic problem, it was shifted to Lal Kothi Mandi Yard in the year 1984. With the increase in the population and expansion of the Jaipur City, however, this problem further aggravated and

therefore the respondents decided to have new Krishi Upaj Mandi Yard at Village Mohana. A decision was also taken to establish fruit and vegetable Mandi too at Mohana. The counsel representing the State rightly informed this Court in suo moto public interest litigation that the process of establishing new Krishi Upaj Mandi Yard for fruit and vegetable was carrying on at village Mohana. The petitioner-sangh filed application for its impleadment as party in that public interest litigation and upon hearing them and all others, the division bench of this Court by its order dated 27.2.2004 directed in public interest for shifting of complete trade from Lal Kothi to Mohana within a period of eight months. The Hon'ble Supreme Court although noted

the preparedness of the members of the petitioner-sangh to shift to Block-D but the Court categorically stated that it need not go into that question at this stage. In fact, the Hon'ble Supreme Court permitted the State Government to issue appropriate notification as may be necessary for enforcement of its policy / scheme in accordance with law. The respondents have invited applications from 'A' class brokers/joint traders/allottee traders of Lal Kothi Krishi Upaj Mandi Yard for allotment of plot at Mohana vide advertisement dated 11.6.2004. Last date for submission of application was extended vide mandi notice dated 1.7.2004. In the lay out plan that was prepared and supplied to all concerned, Block A & B have been shown

for fruits, Block C has been shown for vegetables and Block D has been shown for potato and onion. While in the first map, the size of this block was shown as 25ft x 80 ft. whereas on receiving demand from different unions including the petitioner-sangh the size of the shop was then revised to 30ft.x 80ft. The Jaipur Phal Subji Aloo Artiya Maha Sangh also submitted a representation on 29.1.2004 in this regard. It was as a consequence of this representation that the Director, Agriculture Marketing Board wrote a letter on 20.9.2004 to the Administrator, Rajasthan State Agriculture Marketing Board, Jaipur for amendments in the lay out plan and change in the size of the shops and also requested for giving two gaps in one row of the shops. A meeting

of the Board was held on 21.9.2004 in which the decision was taken for certain amendments in the lay out plan. It was thereafter that meeting of Allotment Committee was held on 27.9.04 in which allotment of lands for construction of shops to the eligible firms was made. The Committee in its meeting dated 27.9.2004 invited various traders associations. Though initially they participated in the meeting but later on boycotted the same. The Allotment Committee looking to the demands of all concerned decided to re-designate the blocks. There was heavy demand of shops from those engaged in vegetable business, therefore, 275 shops of C & D Blocks were renamed as Block C. Some of the shops of Block-C were kept reserved for further

extension/expansion. Since the traders dealing in the business of onion and potatoes were lesser in number, therefore, the Allotment Committee decided to allot them shops in Block-A where less number of shops were available. Some of the plots in Block-A were further kept vacant for further expansion. This decision was taken on 21.9.2004 and was very well known to the members of the petitioner-sangh. They are now estopped from challenging the same at this belated stage after three years. In fact, after allotment of the plots in C-Block which also include the originally earmarked D-Block, the allottees have also started construction of their shops. The learned counsel has also produced copy of the minutes of the meeting held

on 27.9.04. It was argued that while the petitioner had already filed the writ petition no.1285/05 which was later withdrawn on 18.10.06, they did not challenge re-designation of Block-C and D jointly as Block-C at that stage and therefore they are now estopped from doing so. It is submitted that the Government has rightly issued the notification dated 18.10.2006 as per the opportunity granted by the Hon'ble Supreme Court. The very purpose of setting up of new yard at Mohana is to relieve the city of Jaipur from traffic congestion. This decision was in fact taken in public interest and was enforced expeditiously in compliance of the directions issued by this Court in suo motu public interest litigation. Learned

counsel argued that the challenge to notification dated 18.10.06 is wholly misconceived in as much as Government was well within its rights in notifying new Krishi Upaj Mandi Samiti (Vegetables and Fruits), Mohana and at the same time denotifying Lal Kothi Mandi Samiti in exercise of powers conferred upon it by Section 5 of the Act. It was submitted that a road measuring 220 feet has been provided from the main entrance of the Mandi Yard and on the left side of the road is Block-A in which allotment shall be made to the petitioners whereas on the right side of the road Block-C has been shown. There is therefore not major difference in the approach of both the blocks.

Shri Inderjeet Singh, learned counsel

for the respondent Samiti submitted that notification issued under Section 4 of the Act, is perfectly valid. Market area for fruit and vegetable was been notified way back in the year 1975 in which Tehsil Sanganer has also been included and present village Mohana falls under Tehsil Sanganer. Copy of the notification dated 4.12.1975 has been placed on record. It was argued that the respondents have invested huge amount of Rs.15 crores for acquisition of land and for establishment of mandi yard at Mohana. The Government has spent a further amount of Rs.27 crores for providing the facilities like street light, electricity, lighting, block connection, internal roads, auction, platforms, boundaries, farmers facilitation center, post-office

building, bank buildings, sulabh complex, labour sheds, development of truck stand, drinking water facilities, sewerage system, park, foundation and plantation, sign boards at national highway etc. Now at this stage, the petitioners cannot be allowed to defeat the very purpose and object of setting up new yard. In the notification issued on 18.10.06, Lal Kothi was closed down and it was notified that the trading from Mohana Mandi was to commence from 1.4.07. Now the State Government vide amended notification dated 4.4.07 has extended the date for shifting of trade in new Krishi Upaj Mandi Yard Mohana from 1.4.07 to 30.9.2007. It was therefore prayed that the writ petition having no merit be dismissed.

I have given by thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

There are basically two reliefs which the petitioner Sangh has prayed for in this writ petition. While on the one hand, the petitioner has challenged validity of the notification dated 18.10.06, but on the other hand, it has challenged the merger of originally earmarked D-Block into C-Block and consequential allotment of the shops to the members of the petitioner Sangh in A-Block. Grievance has been raised that the correct facts with regard to the establishment of the terminal market at Mohana were not placed before this Court in suo moto public interest litigation

and the direction thereabout was issued without providing an opportunity of hearing to them. But that grievance does not appear to be well founded for two reasons. Firstly, the process of acquisition of land, setting up terminal market at Mohana, allotment of shops for issuance of notice and providing application form allotment, started much before the aforesaid division bench judgment was passed by this Court in the aforesaid public interest litigation. And secondly for the reason that the Hon'ble Supreme Court while refusing to interfere with the direction of the division bench observed that "State Government shall take effective steps for ironing out the difficulties and making

it feasible for the Mandi to be shifted to Mohana within a period of eight months." Aforesaid direction was issued by this Court in the context of various maladies in certain areas of Jaipur city regarding the problems of filth and squalor and entry of trucks and heavy vehicles on city roads and consequent congestion of traffic, the movement of street cattles etc. and others. When however it was brought to the notice of the Hon'ble Supreme Court, the Court granted opportunity to the State Government to take requisite steps for implementation of provisions of the said Act and in the event of any such notification being issued, legality and validity of the same was allowed to be challenged before this Court. At the same

time however it was made clear that this would not mean that the High Court in the existing public interest litigation would not be entitled to pass appropriate Court order with regard to traffic or other questions pending before it. Contention of learned counsel for the petitioner therefore that the terminal market at Mohana was result of the direction issued by division bench of this Court in the aforesaid public interest litigation where they did not have proper opportunity to put up their case is only noticed to be rejected for the aforesaid reasons. All that has happened pursuant to direction of the division bench is that the process of setting up the terminal market at Mohana which had been lying pending for quite some time in the

past was speeded up and notified.

I shall now come to the argument that the decision of the respondent regarding merger of Block-D with Block-C and shifting allotment of the members of the petitioner Sangh to Block-A being contrary to the Government instruction dated 20.9.04 and decision taken in the meeting on 21.9.2004 which was presided by the Administrator of the Board. This is to be noted that by instruction dated 20.9.04 the Director of Agriculture Market and Administrator of the Board merely required that in view of the proposed change in the size of shop from 20ft x 80ft to 30ft x 80 feet and making provisions of two gaps between the lines of the shops, the lay out plan should be revised and placed before

the Allotment Committee. Decision taken in the meeting dated 21.9.2004 was also in no way different than the one conveyed by letter dated 20.9.04. In fact, this decision merely decided upon the modalities to be adopted for revising the lay out plan. Increase in the size of the shops, obviously resulted in decrease in the number of shops which in turn necessitated certain adjustments to be made. This was why the Block-D was abolished and the shops that could be available in Block-D were merged in Block-C. As has been rightly explained by the respondents, number of allotments to those engaged in the trading of vegetables being more, therefore Block-C and Block-D taken together have 275 shops which now formed unified Block-C

earmarked for them, by keeping some of the shops vacant in that block for future expansion / extension. Since number of traders were dealing in onion and potatoes were less, their allotments were shifted to Block-A while keeping part of it vacant for further expansion. What is significant to note is that all these developments took place way back in the year 2004 and are being now challenged more than two years thereafter in the writ petition filed on 12.12.2006. When the petitioners earlier filed writ petition no.1285/05 they did not challenge merger of Block-D with Block-C and shifting their allotment to part of Block-A. Even if the delay is ignored, it is always open to the respondents to decide as to which category of traders

should be allotted shops in which part of the market yard. This decision being a matter of administrative convenience, appears to have been taken out of necessity to accommodate more number of allottees and keeping in view future expansion and due to increase in the size of plots of shops. This Court cannot replace their decision by its own. So long as the action of the respondents is bona fide and is not actuated by mala fides or extraneous considerations and is not intended to favour certain individuals or otherwise arbitrary, this Court in exercise of its power of judicial review cannot interfere therewith requiring them to restore the D-Block by annulling their decision to abolish the same which was merged with

Block-C. Although orally it was sought to be argued that the action was mala fide but neither any material facts nor particulars have been placed on record to substantiate that the action of the respondents in seeking to abolish Block-D and shifting the allotment of those trading in onion and potatoes is mala fide. No individual either in any official capacity who allegedly influenced such decision has been named anywhere in writ petition. Nor even any such person has been impleaded as party respondent. Such bald allegations therefore cannot be accepted on mere ipse-dixit of the petitioners. No interference in such matter is therefore called for by this Court. Accordingly the argument seeking annulment of the

decision to abolish D-Block and its merger with C-Block is also rejected.

Adverting now to the validity of notification dated 18.10.2006, the only ground on which the notification dated 18.10.2006 has been assailed is that while the Government in exercise of its power under section 5 of the Act is authorised to issue notification to notify any place as the principal market yard but it does not have the power to de-notify the existing principal market yard and therefore such a decision is illegal and ultra vires the provisions of Section 5 of the Act. Further more, it is argued that so far no notification under Section 4 of the Act has been issued specifically declaring such market area for trading of fruits and vegetables.

Village Mohana falls within the Panchayat Samiti of Sanganer. So far as the first limb of the argument is concerned, Section 5 provides that for different market area there shall be one principal yard and one and more sub-market yards and the State Government by notification may notify so in the official gazette. The respondents have placed on record the copy of the notification dated 23.9.1975 issued under Section 3 of the Act, 1961 whereby the State Government invited objections for notifying the Krishi Upaj Mandi Samiti (Fruit & Vegetable), Jaipur covering the areas of Panchayat Samities of Jhotwara, Amer, Sanganer, Bassi, Ramgarh and Nagar Parishad, Jaipur and the Municipal Corporation, Jaipur and also Municipal

Board, Amer and Sanganer for sale and purchase of fruits and vegetables as enumerated therein. It was for the aforesaid market area that Krishi Upaj Mandi Samiti (Fruits & Vegetables) under Section 4 of the Act was notified vide notification dated 4.12.1975. One principal market yard and one or more sub-market yard could be established in accordance with provisions of sub-section (1) of Section (5). Krishi Upaj Mandi Samiti (Fruits & Vegetables), Lal Kothi was notified as the principal market yard vide Government notification dated 6.9.1983. The Government has now issued notification dated 18.10.2006 denotifying the market yard at Lal Kothi and at the same time notifying Mohana as the principal market yard within the meaning

of Section 5. Reasons assigned in the notification are that since "there has been enormous increase in the population of Jaipur City and residential area on southern side of the city has outreached Sanganer" and further since "the number of vehicles, trucks arriving at Lal Kothi, principal yard is approximately 1000 per day and the space in the existing yard is falling far short of the requirement" and also that "looking to the problem of space with existing yard and intensive traffic problems and the market committee decided to construct a new principal yard at Village Sukhiya Mohana, Tehsil Sanganer and the action for acquisition for land was initiated in the year 1995" and further that "possession of 138 hectare of land was

taken on 7.3.1998 & 24.9.2002 and the construction of new principal yard was started in the year 2000" and also that "so far approximately Rs.25 crores have been spent on development of new principal yard and plots have been allotted to the traders for construction of shops / godowns" and that "Division Bench of Hon'ble High Court has also directed to shift the existing yard", therefore, in exercise of the powers conferred upon the Government vide Section 5(2) of the Act, the yard at Sukhiya Mohana was notified as the principal market yard with immediate effect. Such a decision, as would be evident from the reasons cited in the notification itself, was based on valid and sound considerations. And in fact,

shifting of the mandi was being felt as a pressing necessity for a long time which is why the respondents proceeded to acquire the land and invested huge sums of money in making the provisions for various amenities like street light, electricity, lighting, block connection, internal roads, auction complexes, boundaries, farmers facilitation center, post office, building, two bank buildings, Sulabh complex, labour sheds, development of truck stand, drinking water facility, sewage system, drinking water system, internal road (II phase), park fountain and plantation, signboard at National Highway etc. Necessity of shifting had become imperative and even found recognition in the directives issued by the division bench of the Court

in public interest. In fact the argument that while Government can notify one principal market yard but it cannot denotify the principal existing market yard proceeds on the misreading of sub-section (1) of Section (5) which inter alia provides "there shall be one principal market yard and one or more such market yard as may be necessary." Conjoint reading of Section 4 and 5 of the Act makes it clear that there can be only one principal market yard for a particular region declared under Section 4 which in the present case is Jaipur. This by necessary implication would mean that there cannot be two principal market yards for one place. If what the petitioner is contending is accepted, this would lead to absurd consequences in

that, while the Government can notify another principal market yard but it cannot denotify a pre-existing market yard. A correct reading of section 5 would lead the Court to hold that there can be only one principal market yard within the market area notified in Section 4. Even if, the power to denotify the pre existing market yard and notify another yard as the principal market yard is not specifically to be found in Section 5 of the Act of 1961, the same shall be read to be vested in the Government by recourse to Section 23 of the Rajasthan General Clauses Act, 1955, which inter alia provides as under:-

"Power to make or issue to include power to add, to amend, vary or rescind orders, etc.-
Where, by any Rajasthan law, a power to make or issue order,

rules, regulations, schemes, forms, bye-laws or notifications is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any orders, rules, regulations, schemes, forms, bye-laws or notifications so made or issued."

It will be evident from the quoted Section 23 that where by any Rajasthan Law has conferred the power upon the Government to make or issue an order, that power would also include the power exercisable in the like manner and subject to the like sanction and conditions, if any, to add, to amend, vary or rescind any orders etc. It would be therefore clear that when the Government has got the statutory power to notify a particular area as principal market yard and if in course of time and

out of necessary, it is required to notify another area as the principal market yard within the broader market area notified under Section 4, it can legitimately rescind the earlier notification and notify another area as the principal market yard within the meaning of Section 5(1) of the Act. This argument also therefore does not have any substance and is accordingly rejected.

Action of the respondents on neither of the counts, in either abolishing Block-D and merge the same with Block-C by shifting allotment of the members of the petitioner Sangh to Block-A or denotifying the Lal Kothi Mandi as the principal market yard so as to notify Mohana as the principal market yard can be said to be arbitrary, incompetent, unreasonable

and in any way violative of Article 14 and 19(1)(g). Right to trade of the petitioner guaranteed by article 19(1)(g) is always subject to reasonable restrictions and reasons which have been assigned by the respondents on both the counts qualify the test of reasonable restrictions. Arguments advanced on behalf of the petitioner on this respect is also devoid of any substance and is accordingly rejected.

Upshot of the above discussion is that the writ petition being devoid of merits is dismissed though with no order as to costs.

(Mohammad Rafiq), J.

RS/-